



THE COMMONWEALTH OF MASSACHUSETTS
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March 14, 2023

OML 2023 – 33

VIA EMAIL ONLY

Layla G. Taylor, Esq.
Sullivan, Hayes & Quinn, LLC
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RE: Open Meeting Law Complaint

Dear Attorney Taylor:

This office received a complaint from Jonathan Gerhardson on December 14, 2022,¹ alleging that the Northampton School Committee (the “Committee”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Committee on October 21, and, after an extension of time granted by our office, you responded on behalf of the Committee by letter dated November 16. The complaint stems from a request the Complainant made on October 9 for meeting minutes. We understand the complaint to allege that the Committee and its subcommittees failed to timely create and approve meeting minutes.²

¹ All dates are in 2022, unless otherwise stated.

² To the extent the complaint alleges that the Committee failed to post meeting minutes to a website, we decline to review this allegation. The Open Meeting Law does not require a public body to post minutes to a website, but rather requires that minutes be provided within 10 days of a request for minutes. See G.L. c. 30A, § 22(c). Therefore, an allegation that the Committee failed to post meeting minutes to a website, even if true, does not allege a violation of the Open Meeting Law. See OML Declination 9-27-21 (Harvard School Committee); OML Declination 1-25-16 (Nahant Housing Authority Board of Commissioners); OML Declination 5-21-12 (Hampden-Wilbraham Regional School Committee). Although the Open Meeting Law does not require public bodies to post meeting minutes to a website, we encourage public bodies to do so in order to ensure meeting minutes are as accessible as possible.

Following our review, we find that the Committee violated the Open Meeting Law as alleged. In reaching this determination, we reviewed the Open Meeting Law complaint, the Committee's response, the request for further review, subsequent communications directed to our office, and communications exchanged between the Complainant and Counsel for the Committee.³ We also reviewed a sampling of the Committee's meeting minutes. Finally, we communicated with Counsel via telephone and email.

FACTS

We find the relevant facts to be as follows. On Sunday, October 9, the Complainant sent an email to Northampton Mayor Gina-Louise Sciarra, who serves as the Committee's chair, and Annie Thompson, the Committee's Clerk and Secretary. In the email the Complainant cited to the Open Meeting Law and requested meeting minutes for "all School Committee Meetings and Ad Hoc School Committee meetings from January 2020 to present." Having received no minutes in response to his request and based on an email response from Ms. Thompson, the Complainant concluded that the minutes he requested must not exist and so he filed the Open Meeting Law complaint at issue here with the Committee on October 21.

DISCUSSION

The Open Meeting Law requires that public bodies create and approve meeting minutes, whether for open or executive session, in a timely manner. G.L. c. 30A, § 22(c). "Timely manner" means "within the next three public body meetings or within 30 days, whichever is later, unless the public body can show good cause for further delay." 940 CMR 29.11; see OML 2018-48.⁴ Whenever possible, we recommend that minutes of a meeting be approved at the following meeting. See OML 2018-67; OML 2017-133.

The complaint alleges that the Committee failed to create and approve meeting minutes in a timely manner. In its November 16 response to the complaint, the Committee acknowledged that at that time there were meeting minutes going back to April that had not yet been drafted or approved. The Committee further acknowledged that there were some minutes from 2021 that had not yet been approved. Although the Committee acknowledges that it did not timely create and approve meeting minutes, it asserts that it had good cause for delay in creating and approving minutes. Specifically, the Committee cites to a reduction in staff and staff availability, as well as an increase in Committee meetings.

Although we understand and appreciate the demands on a public body with limited staff, it is the Committee's obligation to timely create and approve minutes. See OML 2019-21; OML 2018-111; OML 2017-115. In general, staffing shortages of the type that all governmental bodies with limited resources experience, or periodic staff vacancies, do not constitute good cause for failing to approve minutes in a timely manner, as it is the responsibility of the public body and its members to take steps to ensure that staff have adequate assistance to complete the minutes in a timely manner, including having members of the public body assist in the creation of minutes if

³ For the sake of clarity, we refer to you in the third person.

⁴ Open Meeting Law determinations may be found at the Attorney General's website, www.mass.gov/ago/openmeeting.

necessary. See OML 2021-177; OML 2018-105; OML 2015-86. Ultimately, the responsibility for complying with the Open Meeting Law's requirement that meeting minutes be created and approved in a timely manner rests with public bodies and members of such bodies, not with individual public employees such as administrative staff. See OML 2018-105. Therefore, we find that the Committee has not demonstrated good cause for its delay in creating and approving meeting minutes and that the Committee, therefore, violated the Open Meeting Law.

We understand that the Committee has been working to approve past meeting minutes and has provided several sets of minutes to the Complainant. We also understand that in response to the complaint the Committee has taken steps to audit its past meeting minutes and establish a process to ensure timely creation and approval of minutes going forward. We commend the Committee for taking these proactive steps.

Next, although not raised in the complaint, we remind the Committee that the Open Meeting Law requires that the "minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days." G.L. c. 30A, § 22(c). If such minutes do not yet exist at the time of a request, the public body is still required to respond to a request within 10 days with an explanation of whether the minutes do or do not exist in either approved or draft form. See OML 2018-98; OML 2017-50; OML 2016-71; OML 2015-173. Furthermore, a request for meeting minutes that is directed to a public body will fall under the Open Meeting Law and requires a response within 10 *calendar* days. See G.L. c. 30A, §§ 22(c), (g); OML 2019-163; OML 2019-20; OML 2017-50. On the other hand, a request for minutes that is directed to a clerk or other municipal employee as Records Access Officer will likely fall under the Public Records Law and requires a response within 10 *business* days. See G.L. c. 66, § 10; see also OML 2019-126; OML 2019-68.

Finally, in the request for further review, the Complainant alleges, among other things, that the "majority" of the minutes provided to the Complainant after he filed his complaint with the Committee are insufficiently detailed. We decline to review allegations not raised in a complaint filed with the Committee.⁵ Therefore, we decline to formally review the sufficiency of the Committee's meeting minutes; however, after a cursory review of a sampling of the minutes, we bring several concerns to the Committee's attention.

The Open Meeting Law requires that a public body "create and maintain accurate minutes of all meetings, including executive sessions." G.L. c. 30A, § 22(a). Minutes must include "the date, time and place [of the meeting], the members present or absent, a *summary of the discussions on each subject*, a *list of documents and other exhibits used at the meeting*, the decisions made and the actions taken at each meeting, including the record of all votes." Id. (emphasis added). When reviewing minutes for compliance with the Open Meeting Law, we look for substantial compliance with the accuracy requirement. See OML 2013-64. By

⁵ Potential violations discovered after a complaint has been filed with a public body should be alleged in a subsequent complaint filed with that body. This allows the public body an opportunity to investigate and take appropriate remedial action with regard to the additional allegations. See G.L. c. 30A, § 23(b); 940 CMR 29.05(3). Additionally, complainants must allege violations with a degree of specificity as our office will not conduct broad audits of public bodies based on generalized allegations. See OML 2021-133; OML Declination 4-22-15 (Natick Economic Development Committee); OML Declination 3-20-12 (Wilmington Board of Assessors).

substantial compliance, we mean that the minutes should contain enough detail and accuracy so that a member of the public who did not attend the meeting could read the minutes and have a clear understanding of what occurred. See OML 2012-106. A transcript is not required, and the minutes do not need to include every remark or opinion presented. See OML 2017-104; OML 2016-40. However, minutes must include more than a statement that a discussion was held about a specified topic; the minutes must actually summarize the discussions that were held. See OML 2019-167; OML 2018-8.

Additionally, there are a few circumstances in which votes of a public body must be taken by roll call. These include when one or more members participate in a meeting remotely, when entering into executive session, and when convened in executive session. 940 CMR 29.10(7)(c); G.L. c. 30A, §§ 21(b)(2), 22(b). Meeting minutes must accurately record roll call votes. See OML 2021-128 (“Even unanimous votes need to be recorded by roll call in the minutes.”).

The meeting minutes we reviewed include statements that discussions occurred but do not actually summarize those discussions. Additionally, some of the meeting minutes include a link to a recording of the meeting in lieu of summarizing the discussion held, this is insufficient to comply with the Open Meeting Law. See OML 2023-11 (finding that attaching a report to meeting minutes did not satisfy the requirement to summarize the discussions held); OML 2014-4 (a statement in meeting minutes to “[p]lease refer to recording for specific details” was insufficient to comply with the requirement to summarize the discussion held). Additionally, the minutes do not include a list of documents used, even though some of the minutes document decisions made that presumably were based on a review of particular documents. Finally, it is unclear from the minutes whether the Committee failed to take votes by roll call as required or whether the Committee failed to record roll call votes in the minutes as required. We encourage the Committee to amend any meeting minutes that do not satisfy the requirements described above.

CONCLUSION

For the reasons stated above, we find that the Committee violated the Open Meeting Law by failing to timely respond to a request for meeting minutes and by failing to timely create and approve meeting minutes. We order the Committee’s immediate and future compliance with the Open Meeting Law and caution that future similar violations may be considered evidence of intent to violate the Law. Additionally, we order the Committee, within 60 days of the date of this letter, to create, approve, and provide to the Complainant any minutes from meetings held between January of 2020 and October 9, 2022, that have not yet been provided to the Complainant.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with the Committee or with our office. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Elizabeth Carnes Flynn
Assistant Attorney General
Division of Open Government

cc: Mayor Gina-Louise Sciarra, Chair, Northampton School Committee (via email: mayor@northamptonma.gov)
Northampton School Committee (via e-mail: northampton-school-committee@northampton-kl2.us)
Jonathan Gerhardson (via e-mail: [REDACTED])

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.